

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: August 21, 2018

JESSICA NIXON,

Administrator of the Estate of

RHONDA NIXON,

Petitioner,

v.

SECRETARY OF HEALTH

AND HUMAN SERVICES,

Respondent.

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UNPUBLISHED

No. 13-738V

Special Master Gowen

Joint Stipulation; Influenza;

Guillain-Barre Syndrome;

GBS; Acute Disseminated

Encephalomyelitis; ADEM;

Significant Aggravation.

Clifford John Shoemaker, Shoemaker, Gentry & Knickelbein, Vienna, VA, for petitioner.

Voris Edward Johnson, United States Department of Justice, Washington, DC, for respondent.

DECISION ON STIPULATION¹

On September 25, 2013, Rhonda Nixon filed a petition in the National Vaccine Injury Compensation Program (“Program”).² Petition, ECF No. 1. Ms. Nixon filed an amended petition on October 15, 2013, alleging that she suffered from Guillain-Barre Syndrome (“GBS”) or acute disseminated encephalomyelitis (“ADEM”) as a result of receiving the flu vaccination on October 29, 2010. Amended Petition at 1, ECF No. 8. In the alternative, Ms. Nixon alleged that the flu vaccine significantly aggravated an underlying GBS or ADEM. *Id.* On October 27, 2017, the case caption was amended to reflect that Ms. Rhonda Nixon had passed away, and her daughter, Ms. Jessica Nixon (“Petitioner”), was appointed administrator of her estate. Order Granting Motion to Amend Case Caption, ECF No. 99.

¹ Pursuant to the E-Government Act of 2002, *see* 44 U.S.C. § 3501 note (2012), **because this decision contains a reasoned explanation for the action in this case, I intend to post it on the website of the United States Court of Federal Claims.** The court’s website is at <http://www.uscfc.uscourts.gov/aggregator/sources/7>. Before the decision is posted on the court’s website, each party has 14 days to file a motion requesting redaction “of any information furnished by that party: (1) that is a trade secret or commercial or financial in substance and is privileged or confidential; or (2) that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.” Vaccine Rule 18(b). “An objecting party must provide the court with a proposed redacted version of the decision.” *Id.* **If neither party files a motion for redaction within 14 days, the decision will be posted on the court’s website without any changes.** *Id.*

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) (“Vaccine Act” or “the Act”). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

On August 21, 2018, the parties filed a joint stipulation in which they stated that a decision should be entered awarding compensation to petitioner. Stipulation for Award, ECF No. 115. Respondent denied that the influenza vaccine caused Rhonda Nixon's alleged GBS or ADEM, residual effects, or any other injury or her death. *Id.* at ¶ 6.

Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding compensation to petitioner according to the terms of the joint stipulation attached hereto as Appendix A.

The joint stipulation awards:

A lump sum of \$25,000.00 in the form of a check payable to petitioner, Jessica Nixon, as Personal Representative of the estate of Rhonda Nixon. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

I find the stipulation reasonable and I adopt it as the decision of the Court in awarding damages, on the terms set forth therein.

Accordingly, the Clerk of the Court **SHALL ENTER JUDGMENT** in accordance with the terms of the parties' stipulation.³

IT IS SO ORDERED.

s/Thomas L. Gowen
Thomas L. Gowen
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment is expedited by the parties' joint filing of notice renouncing the right to seek review.

- IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

influenza vaccine. Petitioner further alleges that Rhonda Nixon experienced the residual effects of her injury for more than six months.

5. Petitioner represents that there has been no prior award or settlement of a civil action for damages as a result of Rhonda Nixon's condition.

6. Respondent denies that the influenza vaccine caused Rhonda Nixon's alleged GBS or ADEM, residual effects, or any other injury or her death.

7. Maintaining their above-stated positions, the parties nevertheless now agree that the issues between them shall be settled and that a decision should be entered awarding the compensation described in paragraph 8 of this Stipulation.

8. As soon as practicable after an entry of judgment reflecting a decision consistent with the terms of this Stipulation, and after petitioner has filed an election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), the Secretary of Health and Human Services will issue the following vaccine compensation payment:

A lump sum of \$25,000.00 in the form of a check payable to petitioner, Jessica Nixon, as Personal Representative of the estate of Rhonda Nixon. This amount represents compensation for all damages that would be available under 42 U.S.C. § 300aa-15(a).

9. As soon as practicable after the entry of judgment on entitlement in this case, and after petitioner has filed both a proper and timely election to receive compensation pursuant to 42 U.S.C. § 300aa-21(a)(1), and an application, the parties will submit to further proceedings before the special master to award reasonable attorneys' fees and costs incurred in proceeding upon this petition.

10. Petitioner and her attorney represent that compensation to be provided pursuant to this Stipulation is not for any items or services for which the Program is not primarily liable

under 42 U.S.C. § 300aa-15(g), to the extent that payment has been made or can reasonably be expected to be made under any State compensation programs, insurance policies, Federal or State health benefits programs (other than Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq.), or by entities that provide health services on a pre-paid basis.

11. Payment made pursuant to paragraph 8 and any amounts awarded pursuant to paragraph 9 of this Stipulation will be made in accordance with 42 U.S.C. § 300aa-15(i), subject to the availability of sufficient statutory funds.

12. Petitioner represents that she presently is, or within 90 days of the date of judgment will become, duly authorized to serve as Personal Representative of Rhonda Nixon's estate under the laws of the State of Arizona. No payment pursuant to this Stipulation shall be made until petitioner provides the Secretary with documentation establishing her appointment as Personal Representative of Rhonda Nixon's estate. If petitioner is not authorized by a court of competent jurisdiction to serve as Personal Representative of the estate of Rhonda Nixon at the time a payment pursuant to this Stipulation is to be made, any such payment shall be paid to the party or parties appointed by a court of competent jurisdiction to serve as Personal Representative of the estate of Rhonda Nixon upon submission of written documentation of such appointment to the Secretary.

13. In return for the payments described in paragraphs 8 and 9, petitioner, in her individual capacity and as Personal Representative of the estate of Rhonda Nixon, and on behalf of the estate's heirs, executors, administrators, successors or assigns, does forever irrevocably and unconditionally release, acquit and discharge the Secretary of Health and Human Services and the United States of America from any and all actions or causes of action (including

agreements, judgments, claims, damages, loss of services, expenses and all demands of whatever kind or nature) that have been brought, could have been brought, or could be timely brought in the Court of Federal Claims, under the National Vaccine Injury Compensation Program, 42 U.S.C. § 300aa-10 et seq., on account of, or in any way growing out of, any and all known or unknown, suspected or unsuspected personal injuries to, or death of, Rhonda Nixon resulting from, or alleged to have resulted from, the influenza vaccine administered on October 29, 2010, as alleged by petitioner in a petition for vaccine compensation filed on or about September 25, 2013, in the United States Court of Federal Claims as petition No. 13-738V.

14. If the special master fails to issue a decision in complete conformity with the terms of this Stipulation, or if the Court of Federal Claims fails to enter judgment in conformity with a decision that is in complete conformity with the terms of this Stipulation, then the parties' settlement and this Stipulation shall be voidable at the sole discretion of either party.

15. This Stipulation expresses a full and complete negotiated settlement of liability and damages claimed under the National Vaccine Injury Act of 1986, as amended, except as otherwise noted in paragraph 9 above. There is absolutely no agreement on the part of the parties hereto to make any payment or to do any act or thing other than is herein expressly stated and clearly agreed to. The parties further agree and understand that the award described in this Stipulation may reflect a compromise of the parties' respective positions as to liability and/or amount of damages, and further, that a change in the nature of the injury or condition or in the items of compensation sought, is not grounds to modify or revise this agreement.

16. This Stipulation shall not be construed as an admission by the United States of America or the Secretary of Health and Human Services that Rhonda Nixon's alleged GBS or

ADEM and residual effects, or any other injury, or her death, was caused-in-fact by the influenza vaccine.

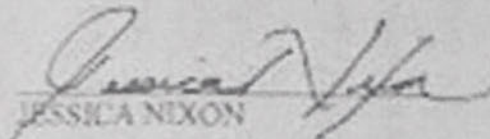
17. All rights and obligations of petitioner hereunder shall apply equally to petitioner's heirs, successors and/or assigns.

END OF STIPULATION

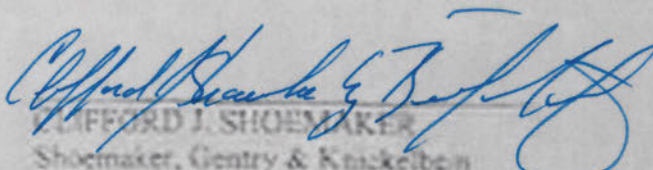
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Respectfully submitted,

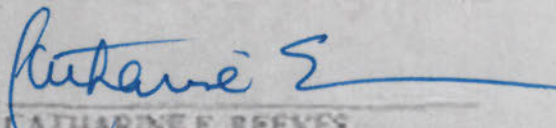
PETITIONER:


JESSICA NIXON

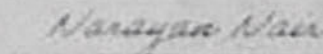
ATTORNEY OF RECORD FOR
PETITIONER:


CLIFFORD J. SHOEMAKER
Shoemaker, Gentry & Knickelbon
9711 Meadowlark Road
Vienna, VA 22182
(703) 281-6395

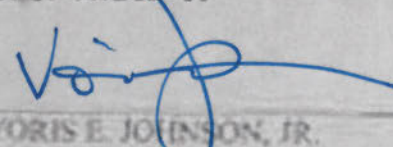
AUTHORIZED REPRESENTATIVE
OF THE ATTORNEY GENERAL:


CATHARINE E. REEVES
Deputy Director
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146

AUTHORIZED REPRESENTATIVE
OF THE SECRETARY OF HEALTH
AND HUMAN SERVICES:


NARAYAN NAIR, M.D.
Director, Division of Injury
Compensation Programs (DICE)
Healthcare Systems Bureau
U.S. Department of Health
and Human Services
5600 Fishers Lane
Parklawn Building, Mail Stop 05N146B
Rockville, MD 20857

ATTORNEY OF RECORD FOR
RESPONDENT:


VORIS E. JOHNSON, JR.
Senior Trial Attorney
Torts Branch
Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, DC 20044-0146
(202) 616-4136

Dated 8/21/18